United States Department of Labor
Employees' Compensation Appeals Board

MARILYN S. FREELAND, Appellant	)	
and	)	**Docket No. 06-563**
	)	**Issued: June 7, 2006**
U.S. POSTAL SERVICE, CORAL SPRINGS POST OFFICE, Coral Springs, FL, Employer	)	

Appearances:
Capp P. Taylor, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 9, 2006 appellant filed a timely appeal from an October 18, 2005 decision of the Office of Workers' Compensation Programs granting a schedule award for a 43 percent permanent impairment of the uterus. Pursuant to 20 C.F.R. §§ 501.2(c) and 501(d)(3), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that she sustained greater than a 43 percent permanent impairment of the uterus, for which she received a schedule award.

FACTUAL HISTORY

The Office accepted that on October 21, 2002 appellant, then a 55-year-old city letter carrier, sustained a uterine prolapse and enterocele due to lifting heavy tubs of mail. Appellant

stopped work on October 25, 2002.[1] On October 29, 2002, Dr. Phillip A. Caruso, an attending Board-certified gynecologic oncologist, performed a "total abdominal hysterectomy and bilateral salpingo-oophorectomy; Williams-Richardson fascial sling" and a Moskowitz enterocele repair. The Office approved the surgery.

In January 26 and February 20, 2004 reports, Dr. John DeBarros, an attending plastic surgeon, opined that appellant had attained maximum medical improvement as she had no palpable hernias, although she complained of intermittent lower abdominal pain. The Office approved bilateral ilioinguinal nerve block injections to treat the abdominal pain.

On June 24, 2004 appellant claimed a schedule award. She returned to full-time light duty on July 9, 2004.

On July 15, 2004 the Office referred the medical record to an Office medical adviser to determine the appropriate percentage of impairment for loss of use of the uterus. In a July 16, 2004 report, an Office medical adviser opined that appellant reached maximum medical improvement as of January 26, 2004. Referring to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (hereinafter, A.M.A., *Guides*), the Office medical adviser noted that Table 7-10, page 165 provided that a hysterectomy constituted a 15 percent impairment of the whole person.[2] He explained that the "maximum impairment for a hysterectomy is 35 percent of the whole person. Per the formula A/B = X/100, A is the whole person impairment of [claimant] and B is the maximum impairment for the organ. Thus, 15/35 x 100 = 1500/35 = 43 percent of the uterus."[3]

By decision dated September 13, 2004, the Office awarded appellant a schedule award for a 43 percent impairment of the uterus. The period of the award ran for 88.15 weeks, from July 11, 2004 to March 20, 2006.[4]

On September 20, 2004 appellant requested an oral hearing, held July 13, 2005. She contended that the Office erred by finding only a 43 percent impairment of her uterus as the organ was entirely removed.

[1] The Office initially denied the claim by a January 10, 2003 decision. Following appellant's request for reconsideration and submission of additional medical evidence, the Office vacated the January 10, 2003 decision and accepted a uterine prolapse and enterocele on March 5, 2003.

[2] Table 7-10 page 165 of the fifth edition of the A.M.A., *Guides*, "Criteria for Rating Permanent Impairment Due to Cervical and Uterine Disease," provides that "anatomic cervical or uterine loss in the post-menopausal period" is a 0 to 15 percent impairment of the whole person. "[A]natomic or complete functional cervical or uterine loss in the premenopausal period" is a 26 to 35 percent impairment of the whole person.

[3] The record contains a September 9, 2004 decision, finding that appellant had no loss of wage-earning capacity as of July 9, 2004, when she returned to work in a modified-duty position at a salary equal to or greater than that of her date-of-injury position. This decision is not before the Board on the present appeal.

[4] In a September 9, 2004 memorandum, the Office noted that as appellant remained on the periodic rolls until July 10, 2004, the schedule award would begin on July 11, 2004.

By decision dated October 18, 2005, the Office affirmed the prior schedule award for a 43 percent impairment of the uterus. The Office hearing representative remanded the case to the Office for further development regarding the appropriate percentage of impairment for the bilateral salpingo-oophorectomy.[5]

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[6] and its implementing regulation[7] sets forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[8]

The Act identifies members such as the arm, leg, hand, foot, thumb and finger; functions such as loss of hearing and loss of vision; and organs to include the eye. Section 8107(c)(22) of the Act provides for the payment of compensation for permanent loss of any other important external or internal organ of the body as determined by the Secretary of Labor.[9] The Secretary of Labor has made such a determination and pursuant to the authority granted in section 8107(c)(22), added the breast, kidney, larynx, lung, penis, testicle, ovary, uterus and tongue to the list of schedule members.[10] The Office's regulations provide that total impairment of the uterus/cervix and vulva/vagina entitles an employee to 205 weeks of compensation.[11] Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.[12]

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[5] By second decision dated October 18, 2005, an Office hearing representative set aside a September 9, 2004 decision denying authorization for a proposed panniculectomy and remanded the case to the Office to resolve an outstanding conflict of opinion regarding whether the procedure was medically necessary. Appellant's physicians had opined the surgery would relieve pressure on an incisional neuroma. An Office medical adviser and a second opinion physician opined the procedure was merely cosmetic. As this matter is still pending before the Office, the issue is not in posture for a decision on the present appeal.

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404 (2003).

[8] *See id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

[9] 5 U.S.C. § 8107(c)(22).

[10] 20 C.F.R. § 10.404; *Henry B. Floyd*, *III*, 52 ECAB 220 (2001). *See also* FECA Bulletin No. 92-18 (issued May 25, 1992).

[11] 20 C.F.R. § 10.404(a).

[12] 5 U.S.C. § 8107(c)(19). *Henry B. Floyd*, *III, supra* note 10.

ANALYSIS

The Office accepted that appellant sustained a work-related hernia requiring a total hysterectomy. In determining that the hysterectomy equaled a 43 percent impairment of the uterus, the Office relied on an Office medical adviser's analysis of Table 7-10, page 165 of the A.M.A., *Guides*. This table describes a hysterectomy as a whole person impairment. As the Act does not provide for whole person impairments,[13] the medical adviser used a formula set forth in the Office's procedures for converting whole person impairments into impairment ratings of individual reproductive organs.[14] However, the Board finds that this formula does not apply to a total uterine loss. It is well established that complete surgical loss of a scheduled member equals a 100 percent loss of use.[15] Therefore, appellant's total hysterectomy entitles her to the full 205 weeks of compensation for total uterine loss as specified under the Act's schedule award provisions and implementing regulation.[16] On remand, the Office shall amend the schedule award determination to reflect the total loss of appellant's uterus and award the appropriate schedule award benefits.

CONCLUSION

The Board finds that appellant has established that she sustained a 100 percent impairment of the uterus and is entitled to 205 weeks of compensation in accordance with the Act and its implementing regulations.

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[13] *Tommy R. Martin*, 56 ECAB ___ (Docket No. 03-1491, issued January 21, 2005).

[14] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4c(2), (November 1998 and August 2002); FECA Bulletin No. 92-18 (issued May 25, 1992), "Impairment/Schedule Awards -- Inclusion of Female Reproductive Organs in the Compensation Schedule."

[15] *See Paul A. Zoltek*, 56 ECAB ___ (Docket No. 04-2185, issued February 9, 2005) (total surgical removal of a kidney equals a 100 percent impairment of the kidney entitling the claimant to the full 156 weeks of compensation set forth in the Act's schedule award provisions); *see Hildred I. Lloyd*, 42 ECAB 944 (1991) (amputation of a finger); *John A. Randall* 38 ECAB 553 (1987) (amputation of a toe). *See also* 5 U.S.C. § 8107(c)(6) to (12) regarding the appropriate number of weeks of compensation for loss of individual digits or toes.

[16] 5 U.S.C. § 8107(c)(22); 20 C.F.R. § 10.404.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 18, 2005 is set aside and the case remanded for further development and an appropriate decision consistent with this decision and order.

Issued: June 7, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board